Supreme Court, U.S.
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No. 99-1514

In The

Supreme Court of the United States

JOSEPH D. JONES,

Petitioner,

v.

WAREMART FOODS, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The California Court Of Appeal, First Appellate District

RESPONDENT'S BRIEF IN OPPOSITION

LITTLER MENDELSON, P.C.
ROBERT G. HULTENG,
CSB No. 071293*
MICHELLE R. BARRETT,
CSB No. 197280
650 California Street, 20th Floor
San Francisco, CA 94108-2693
(415) 433-1940

Attorneys for Respondent Waremart Foods, Inc.

* *Counsel of Record*

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OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Petitioner Joseph D. Jones' Petition for a Writ of Certiorari fails to demonstrate that the Court of Appeal's Decision presents the kind of "direct conflict" required by Rule 10(c) of this Court. Indeed, the only question presented by the Petition is whether the California appellate courts erred in dismissing Petitioner Jones' breach of contract claim.

PARTIES

The Parties to this proceeding are those named in the Caption of this case. The corporate name of Respondent was changed from Waremart Foods, Inc. to Winco Foods, Incorporated in May of 1999.

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RESPONDENT'S BRIEF IN OPPOSITION

APPLICABLE STATUTES

The only statutory provision applicable to this case is 29 U.S.C. § 185. Petitioner Jones erroneously invokes California Code of Civil Procedure § 1288. That statute governs petitions to confirm or vacate arbitration awards in California. As found by the California appellate courts, the final and binding grievance award in this case was in favor of Respondent Waremart. There was no reason for Waremart to petition to vacate an award in its favor, and thus California Code of Civil Procedure § 1288 is inapplicable.

Equally irrelevant to this case is 29 U.S.C. § 160(b), also cited by Jones. The National Labor Relations Board declined to proceed on the one unfair labor practice charge filed by Jones, and therefore Jones is without remedy under the National Labor Relations Act, of which 29 U.S.C. § 160(b) is a part.

STATEMENT OF THE CASE

The facts presented to the California Court of Appeal, First Appellate District by the parties are undisputed and straightforward. The Court of Appeal restated these facts accurately at pages 1 through 6 of its Decision. [Petition Appendix pages A1-A7].[1] Briefly stated, Waremart terminated Jones' employment on two different

[1] All references to Appendix pages refer to the Petition's Appendix.

occasions. Jones grieved both termination decisions. For each grievance, the Waremart Employee Association – which represented Jones as a labor organization – selected a subcommittee in accordance with the Collective Bargaining Agreement. Each Subcommittee noticed and held a hearing to receive evidence pertaining to Jones' respective employment terminations. The Employee Association Subcommittees issued two separate decisions. The first Employee Association Subcommittee upheld Jones' first grievance and reinstated him with back pay. The second Employee Association Subcommittee upheld Waremart's decision to terminate Jones. Obviously, Jones liked the first decision and disagreed with the second.

Stripped bare of all extraneous argument, this case reflects the effort of Jones to preserve the grievance award he likes, and escape the one he does not like. The California appellate courts rightly rejected Jones' attempt to select the award of his choosing. Instead, the California courts found that each of the two decisions of the properly-convened grievance panel was worthy of enforcement.

In his Petition, Jones makes much of an interim step between the first and second grievance decisions. It is true that the Employee Association initially declined to recognize Jones' second termination. However, Jones' Petition fails to discuss the key undisputed fact that, at this interim stage, the Employee Association simply refused to select a Subcommittee to hear Jones' second grievance. The convening of a Subcommittee was explicitly required by the Collective Bargaining Agreement.

Thus, when Jones relies upon the August and September 1995 memoranda issued by the Employee Association, his reliance is misplaced. These memoranda were *not* issued by a duly appointed Subcommittee following an evidentiary hearing, as required by the Collective Bargaining Agreement. Indeed, this undisputed fact was crucial to the Court of Appeal's finding that the Employee Association memoranda were not final or binding. [Appendix pages A4, A12 n.2].

Also missing from the Petition is a summary of the grievance proceedings which took place once a second Employee Subcommittee *was* properly convened. As found by the Court of Appeal, the second Subcommittee gave Jones every opportunity to be heard. Following a duly-noticed hearing, and in accordance with the contractual grievance procedure, the second Subcommittee found that Jones was terminated for just cause. This award is entitled to the same deference as the first.

Jones also inexplicably attributes significance to the National Labor Relations Board's November 30, 1995, letter. Jones implies that the NLRB and the Court of Appeal considered the same issues, but reached opposite conclusions. This is not accurate. The NLRB's letter was drafted long *before* the Employee Association even selected a second Subcommittee and *before* the second Subcommittee upheld Waremart's second employment termination of Jones. If anything, the NLRB's letter provides support for the Court of Appeal's ultimate decision to enforce not only the Employee Association Subcommittee's first decision, but its second decision as well.

Waremart submits that Jones has misstated and omitted undisputed facts from his Statement of the Case. Accordingly, the Court should refer to the Court of Appeal's Decision for an accurate factual background. [Appendix pages A1-A7].

REASONS FOR DENYING THE WRIT

I. REVIEW SHOULD BE DENIED BECAUSE THE COURT OF APPEAL'S DECISION DOES NOT PRESENT A "DIRECT CONFLICT" WITH FEDERAL LAW.

In his Petition, Jones correctly points out that "[t]his is not a momentous issue of the day that requires extensive consideration by this Court." [Petition page 11]. Indeed, this Petition does not present *any* issue for the Court to consider, because there is no "direct conflict" as required by Rule 10(c). Both Jones and Waremart agree upon the fundamental principle of law correctly applied by the Court of Appeal: Parties to a collective bargaining agreement *must* exhaust contractual grievance procedures before pursuing court remedies. *See Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652 (1965). [Petition page 7].

Contrary to Jones' assertion, the Court of Appeal upheld this precise principle of law by enforcing *both* decisions of the Employee Association Subcommittee. [Appendix pages A9, A16, A20]. The Court of Appeal further followed this principle of law by inviting Jones to pursue an administrative appeal from the Employee Association Subcommittee's second decision, as required

by the Collective Bargaining Agreement. [Appendix pages A12-A15, A21].

In his Petition, Jones cites the *Steelworkers* trilogy[2] and *United Paperworkers v. Misco, Inc.*, 484 U.S. 29 (1987). Nothing in the Court of Appeal's Decision is even slightly inconsistent with these controlling authorities. Again, Jones wishes to give full deference to one grievance decision – the one in his favor – and no deference to the second decision that went against him. Indeed, for Jones to attack the second grievance decision under the principles of the *Steelworkers* trilogy, he must show it to be tainted by fraud or contrary to the language of the Collective Bargaining Agreement. *See, e.g., Misco, supra,* 484 U.S. at 38. He has done neither.

This case is not a case where "direct conflict" with applicable Supreme Court opinion exists. Rather, this is a case where Jones does not agree with a decision that results from the proper application of the law. Review by this Court is limited to cases where a lower court has misconstrued, misapplied, or misconceived the law. Therefore, the Court should deny this Petition.

A. Petitioner Jones Misconstrues The Result Reached By The Court of Appeal.

This Court need only read the Court of Appeal's Decision to determine that, consistent with California and

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[2] *United Steelworkers of Am. v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

federal precedent, the Court of Appeal deferred to the two Employee Association Subcommittee rulings by finding both to be valid and binding. [Appendix pages A8-A9, A19-A20]. *See also United Paperworkers v. Misco, Inc., supra,* 484 U.S. at 36; *International Brotherhood of Electrical Workers v. Silva,* 96 Cal.App.3d 751, 758-59 (1979). Jones contends that the Court of Appeal substituted its judgment for the judgment of the Employee Association. However, the Court of Appeal's discussion of the second Employee Association's original decision to ignore Jones' second grievance, and its subsequent decision to appoint a Subcommittee to hear the second grievance, is not inconsistent with the principle of deferral. Indeed, the Court of Appeal never required or directed the Employee Association to convene a second Employee Association Subcommittee. Rather, the Employee Association reevaluated its decision to address Jones' second grievance and convened a second Subcommittee of its own accord – over three years *before* the Court of Appeal heard and decided this case.[3] Thus, the Court of Appeal's detailed discussion of the sequence of events serves to illustrate

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[3] Jones' claim that Waremart was collaterally estopped from terminating him a second time also has no bearing upon the issue presented to this Court. Clearly, if the Employee Association Subcommittee had believed that the second termination was prohibited, it would not have ultimately found the termination valid. Moreover, if the Court of Appeal had found that Waremart was collaterally estopped from terminating Jones a second time, the Court of Appeal would have denied full effect to the decision reached by the second Employee Association Subcommittee. It was for the Subcommittee, and not the reviewing courts, to decide how to resolve the merits of Jones' second grievance.

how carefully the Court deferred to the Subcommittees' decisions.

Jones' final argument, which attempts to apply a statute of limitations defense against Waremart, completely misses the fact that Jones' own actions obviated the need for Waremart to appeal any decision. Jones is the one who filed the second grievance, squarely placing both the first Subcommittee decision and Jones' second termination at issue. When a second Subcommittee duly convened to hear evidence on the second grievance, Jones had the opportunity to attend the hearing and present evidence. His refusal to do so appears to have been deliberate. It can only be speculated that Jones knew he would lose on the merits.

In any event, Jones cannot escape the fact that the second Subcommittee rendered a decision in compliance with the contractual grievance procedures. Jones' failure to participate in this second grievance hearing does not allow him to avoid the second Subcommittee's "final and binding decision," nor does it relieve him from exhausting the contractually required administrative remedies.

CONCLUSION

The Court of Appeal did not render a decision in this case that directly conflicts with relevant decisions of this Court. Thus, for all the foregoing reasons, Waremart respectfully requests that review of this Petition be denied.

DATED: April 13, 2000

Respectfully submitted,

LITTLER MENDELSON, P.C.
ROBERT G. HULTENG,
CSB No. 071293*
MICHELLE R. BARRETT,
CSB No. 197280
650 California Street, 20th Floor
San Francisco, CA 94108-2693
(415) 433-1940

Attorneys for Respondent Waremart Foods, Inc.

* *Counsel of Record*